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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

OCT 12 2004

Federal Communication Commission
Bureau/Office**RECEIVED**

In The Matter of)	MB Docket No. 04-191
)	
San Francisco Unified School District)	
)	
For Renewal of License for Station KALW(FM),)	Facility ID No. 58830
San Francisco, California)	File No. BRED-19970801YA

OCT 12 2004

Federal Communications Commission
Office of the Secretary

To: Richard L. Sippel, Chief Administrative Law Judge

**OPPOSITION TO ENFORCEMENT BUREAU'S MOTION TO RULE
ON OBJECTIONS AND DENIALS TO ADMISSION REQUESTS**

1. On or about September 24, 2004, the Enforcement Bureau ("Bureau") filed its Motion to Rule on Objections and Denials to Admission Requests ("Motion"), requesting that the Presiding Officer overrule several of the objections made by the San Francisco Unified School District ("SFUSD") in its responses to four of the 25 requests for admission served by the Bureau, and to deem each of those requests admitted. On October 8, 2004, SFUSD served and filed revised responses to the Bureau's requests for admission, and the Bureau's Motion is accordingly moot. However, for the reasons explained below and to the extent that the issues raised in the Bureau's Motion are still relevant to SFUSD's revised responses, the Presiding

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Officer should uphold each of SFUSD's objections and hold that SFUSD's responses to these requests were adequate. 1/

2. First, the Bureau argues that the Presiding Officer should overrule SFUSD's objections to Admission Request Number 4, which seeks an admission that "Mr. Ramirez intended that SFUSD should respond 'yes' to [the question on SFUSD's renewal application], which asks 'Has the applicant placed in its public inspection file at the appropriate times the documentation required by 47 C.F.R. Section 73.3526 and 73.3527?'" In response to that request, SFUSD originally objected to the extent that the word "intended" is vague and ambiguous. In making this response, SFUSD in no way intended to play word games with the Bureau, but responded as it did to avoid confusion in light of the intent element of the misrepresentation issues involved in this action and the potential ambiguity within the request as to what exactly was intended. In its Motion, however, the Bureau clarified the meaning that it ascribed to the word "intent" in the context of this admission request by stating that "either Mr. Ramirez knew that he was answering 'yes' and he intended to do so, or he checked the 'yes' box in error." Based on this explanation of the meaning of "intended" in the context of this admission request, SFUSD has withdrawn its objection and admits that "Mr. Ramirez knew that he was answering 'yes' and he intended to do so" with respect to question 2 of page 3 of SFUSD's 1997 renewal application.

1/ Pursuant to SFUSD's informal request, the Presiding Officer issued an order on October 5, 2004, FCC 04M-30, allowing SFUSD until October 13, 2004, to submit this response to the Bureau's Motion.

3. The Bureau next challenged SFUSD's objections and denial of Admission Request 18. That request directed SFUSD to admit or deny whether, "[o]n or about the date Mr. Ramirez transmitted the original of Attachment A to a representative of SFUSD for signature, the KALW public inspection file did not include the original or a copy of all the quarterly issues/programs lists required by 47 C.F.R. Section 73.3527." SFUSD appropriately objected that this request called for a legal, rather than factual, conclusion, and that, as a consequence, the phrase "all of the quarterly issues/programs lists required by" the relevant regulation was vague and ambiguous. SFUSD has now revised the remainder of its response to admit as follows:

Subject to and without waiving the foregoing objections or the General Objections, SFUSD admits that at the time that Mr. Ramirez transmitted KALW's renewal application to a representative of SFUSD for signature, the station's public inspection file did not contain issues/programs lists for the entire license period, as required by 47 C.F.R. Section 73.3527. SFUSD further states that, at that time, to the best of its understanding, the public inspection file did contain the document attached as Exhibit O to Golden Gate Public Radio's "Petition to Deny," and that Mr. Ramirez stated that he believed that such document satisfied the issues/programs list requirement. SFUSD further states that it lacks information sufficient to affirm or deny whether any additional documents that might satisfy the issues/programs list requirement, in whole or in part, were in the station's public inspection at the time that Mr. Ramirez forwarded the renewal application to SFUSD's representative for signature, or whether any such documents had been created or timely placed in the public inspection file between January 1, 1991 and July 31, 1997.

4. SFUSD respectfully suggests that the Presiding Officer should uphold SFUSD's objections to Admission Request 18. The Bureau maintains that the "crux" of this request is whether the "public inspection file contained the quarterly issues/programs lists required by the rules" and insists that this is not vague or ambiguous because "the rule clearly spells out in detail what should appear on the lists, as well as when the lists should first be placed in the file." This

argument, however, ignores SFUSD's objection that the request calls for a legal conclusion. This admission request does not ask whether some particular document was in the file, or when a particular document was placed in the file — issues of fact. Instead, it seeks to know whether all documents "required by" FCC regulations were in the public inspection file, and answering that question requires legal analysis. Accordingly, SFUSD's objections to Admission Request 18 are valid.

5. In any event, in light of SFUSD's conditional admission of this request in its revised responses, the Bureau's Motion is now moot. Accordingly, the Presiding Officer should hold that SFUSD's response to this request for admission was proper. 2/

6. Admission Request 19 presents the same problems and more. That request states: "On or about the date that Mr. Ramirez transmitted the original [renewal application] to a

2/ In the Motion, the Bureau also argued that Admission Request 18 and other requests should be "deemed" admitted because "SFUSD's denial is not supported by anyone's sworn statement." That suggestion is not well-founded, however. The relevant regulation states:

Each of the matters of which an admission is requested shall be deemed admitted unless . . . the party to whom the request is directed serves upon the party requesting the admission either: (1) A sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters, or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part.

47 C.F.R. § 1.246(b). The Bureau's complaint concerning the lack of a written sworn statement ignores the objections made by SFUSD to the request and the fact that such objections do not require a sworn statement. In light of SFUSD's valid objections to Admission Request 18 (and the other requests with respect to which the Bureau raises this issue), there is no basis for "deeming" the request admitted. In any event, now that SFUSD has revised its previous responses and has, out of an abundance of caution, attached thereto a sworn statement supporting SFUSD's denials, this technical argument also is moot.

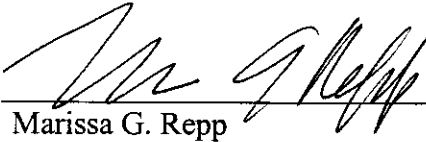
representative of SFUSD for signature, Mr. Ramirez knew that the KALW public inspection file did not include the original or a copy of all of the quarterly issues/programs lists required by 47 C.F.R. Section 73.3527.” Not only does that admission request contain all of the issues as did Admission Request 18 (*i.e.*, legal conclusion, vagueness, ambiguity), by focusing on what Mr. Ramirez “knew,” this request seeks an admission concerning the state of mind of a former SFUSD employee with respect to a legal issue when he answered a question on SFUSD’s renewal application over seven years ago. In light of these problems with Admission Request 19, SFUSD respectfully requests that SFUSD’s objections to that request were valid, and that its response to the request was more than reasonable.

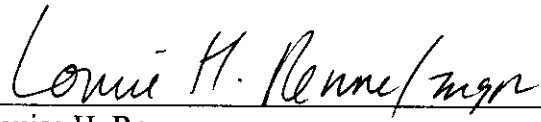
7. Finally, the Bureau takes issue with SFUSD’s similar objections and responses to the similarly-flawed Admission Request 23. That request states: “On or about July 30, 1997, Mr. Ramirez knew that SFUSD had not placed in the KALW public inspection file at the appropriate times the documentation required by 47 C.F.R. Section 73.3527.” This request piles onto the already problematic issues of what is “required by” Commission regulations and what Mr. Ramirez “knew” back in 1997, the thorny legal issue of whether all documents over a seven year period had been placed in the public inspection file at “appropriate times.” Thus, the request again seeks to require SFUSD to admit the state of mind of a former employee concerning a legal issue when he answered a question seven years ago. Such a request is improper, and SFUSD stand by its objections and response for the reasons explained more fully above.

8. For the foregoing reasons, the Presiding Officer should uphold each of SFUSD's objections to the Bureau's admission requests and should recognize that SFUSD's responses to those requests were in all respects proper.

Respectfully submitted,

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October 12, 2004

Certificate of Service

I, Regina Hogan, hereby certify that on this 12th day of October, 2004, a copy of the foregoing **Opposition to Enforcement Bureau's Motion To Rule on Objections And Denials To Admission Requests** was sent by first-class mail, postage prepaid, to:

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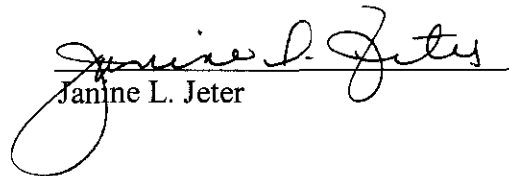
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